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ABSTRACT

This paper describes a three-year long antitrust battle between a morning and an evening metropolitan newspaper and discusses the effectiveness of federal legislation in promoting newspaper diversity. The topics specifically discussed include: (1) the application of antitrust laws to newspapers, (2) the market for the two newspapers, (3) the test the appeals court used to weigh injunctive relief sought by the evening paper, (4) the accusation of intent and attempt to monopolize that the morning paper lodged against its competitor, and (5) the application of two key criteria of the appeals court test--grounds for litigation and hardship on the morning paper. Both the analysis and the discussion following indicate that the district court's action of granting an injunction against the evening newspaper was unfounded, was ultimately reversed by the appeals court, and was relatively ineffective in promoting newspaper diversity. (AEA)

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A Case Study

THE BUFFALO NEWSPAPER LEGAL BATTLE

By

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The two daily newspapers in Buffalo, N.Y. have been battling one another for news, readers and advertisers for decades. Over the last three years, however, the fight also has been waged in the legal arena.

Amidst claims that one paper was trying to drive the other out of business and create a monopoly, the private litigation arises in an era of a dwindling metropolitan newspaper market nationwide; it is especially significant in a city which is among the remaining four percent in the nation which has two dailies not published by the same owner.[1]

This case study describing the anti-trust suit between the Buffalo Courier-Express and the Buffalo Evening News raises a question that has national implications; namely, in a time of the increasing concentration of ownership and media monopolies, how effective is public policy (Federal legislation) in promoting newspaper diversity? Specifically, the public policy involved in the Buffalo case is the federal Sherman Anti-Trust Act, and diversity is used here to mean the maintenance of two competing daily metropolitan papers.

The desirability of diversity finds support in libertarian theory, in which the major traditional components of a pure, free press are diversity and the absence of governmental control.[2] However, in practice, implementation of libertarian theory, relative to diversity, would appear to require at least two modifications. The first concerns diversity of content within the product itself. Empirical research generally shows that the existence of competing newspapers, in themselves, doesn't improve the product's content.[3] Secondly, the application of government policy, through the Sherman Act, where the government was an active litigant, has prevented monopoly in a number of markets and, therefore, promoted diversity.[4]

The legal battle, reported to be piling up extensive legal fees,[5] was

launched by the morning Courier-Express in the Fall of 1977. Citing practices the evening paper was using to kick off its Sunday paper, the Courier filed a civil anti-trust suit and demanded a jury trial. The morning paper charged that the News, under new owners, was seeking to get a monopoly position. The Courier's contention stemmed from the News' announced plans to start a Sunday paper on November 13, 1977, in competition with the Courier's existing Sunday paper. The Courier saw the Sunday News as a threat to the Courier's existence, since the Sunday Courier provided 61 percent of the newspaper's revenue.[6]

The Courier's first step, under the then-ownership of the family of William J. Conners III of Buffalo, was to seek a preliminary injunction against what the Courier viewed as predatory acts by the News. The injunction was granted by the District Court four days before the Sunday News was to be published, but reversed by the U.S. Appeals Court a year-and-a-half later.

Two years after the start of litigation, by the summer of 1979, more than 530 documents had been filed by both sides and the Courier had new owners, the Minneapolis Star and Tribune Co.[7] Three years from the start of litigation, in the summer of 1980, court records showed a trial had yet to be held on the monopoly issue; it was still in the pre-trial discovery stage under U.S. Magistrate Edmund F. Maxwell, of the Western District of New York.[8]

The Combatants

In terms of circulation and advertising revenue, the Evening News has been dominant in the eight western counties which both papers cover. In 1976, the year prior to the suit, the Evening News had a circulation of 277,623 for the Monday through Friday editions. This was more than double the Monday through Saturday circulation of the Courier that year, 127,127. The News' Saturday paper, known as its Weekend Edition, had a circulation of 294,168, slightly

higher than the Courier's Sunday circulation that year of 269,894.[9] Although overall both newspapers have lost circulation through the 1970's, advertising revenue has grown. In 1976, the total for the News was nearly twice that of the Courier, $28,464,730 compared to $16,341,180.[10]

The Courier's treasurer, Richard C. Lyons, said, in a deposition, that 61.25 percent of the Courier's total revenue generated in 1976 was from its Sunday paper, with the remaining 38.75 percent from the combined Monday through Saturday editions.[11] "Quite simply, the Courier's financial viability is dependent upon the revenue (both advertising and circulation) generated by its Sunday paper," Lyons has said. "Without that revenue, the Courier could not survive. Were it not for the Sunday Courier, there would be no daily Courier."[12] Subsequently, on the stand, Lyons stated that the Courier had made a slight profit in 1976, but in 1975, it had lost slightly. Through the first nine months of 1977, Lyons said the paper had lost $330,000.[13]

The News' entry into the Sunday field occurred at the time of new ownership. Until 1975, the Evening News was owned and controlled by the Edward H. Butler family of Buffalo. In April 1977, the Blue Chip Stamp Company bought the paper for $33 million in cash plus $4 million needed for a pension fund. The controlling stockholder in Blue Chip Stamp is Warren E. Buffett of Omaha, Nebraska. Mr. Buffett, who has headed the Washington Post's finance committee, is Chairman of the Board of Blue Chip. Within five months of Mr. Buffett's acquisition, it was announced, on September 3, 1977, the 99-year-old Evening News would be publishing a Sunday paper - the first in 65 years.

The News planned to make its Saturday paper, a special, feature-packed Weekend Edition that sold for 30 cents, into editions similar to those Monday through Friday, to be sold for 15 cents. The Sunday paper would house many of the Saturday features and be developed into a package that would be sold for

30 cents. To introduce the new paper, the News announced, on October 27, 1977, that for the first five weeks, November 13 through December 11, the Sunday paper would be given free to current daily subscribers. Advertisers were guaranteed 280,000 circulation, consistent with the daily figure, for at least four weeks.

The Courier fired the first legal volley on October 28, 1977, in a complaint with the U.S. District Court's Western District of New York. It charged violations of Section 2 of the Sherman Anti-Trust Act and sought damage under Sections 4, 12 and 16 of the Clayton Act.

Section 2 of the Sherman Act states:

> Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

The case was filed in federal court because federal law governs monopolies and because both newspapers accept national advertising which passes through interstate commerce. Simultaneously with the filing of the complaint, by a show cause order signed October 28 by Chief Federal Judge John T. Curtin, the Courier sought a preliminary injunction restraining the News from alleged anti-trust violations.

In the complaint, the Courier alleged the Buffalo Evening News was "engaging in a continuing combination and conspiracy to monopolize..."[14] the daily metropolitan newspaper trade and commerce in the Greater Buffalo area. The Courier claimed the monopoly involved a series of tactics that included: distributing the Sunday paper free of charge for five weeks to current subscribers of the daily editions; planning to price the Sunday paper at 30 cents a copy, forty

percent lower than comparable daily metropolitan papers in New York State; soliciting current Courier customers, newscarriers, advertisers and distributors away from the Courier; the use of false and scandalously disparaging remarks; establishing a rate of advertising at a predatory price, and establishing a money contest, illegal under state law, to get subscribers away from the Courier.

As it entered the legal battle, the Courier itself devoted extensive coverage to the case.[15]

On January 16, 1978, the Buffalo Evening News answered the complaint. The News denied the allegations and initiated a counterclaim. The News charged violations of Sections 1 and 2 of the Sherman Act, contending the Courier was the one seeking to "unreasonably restrain trade" and "to monopolize...the daily metropolitan newspaper business."[16] The News further charged that the Courier used tactics which included: tying purchasing advertising in the Sunday paper to daily editions; selectively reducing ad rates to some advertisers; accusing and publicizing the News falsely of monopolistic intent; selling its daily editions below cost; diverting advertisers through massive free distribution; leading a boycott of the News' Sunday edition; and threatening to sell its newspaper business to large, well-financed chains to intimidate the News. The News sought damages and an end to the alleged anti-trust violations.

On November 9, 1977, 12 days after the Courier filed the complaint and four days before the News was to begin its Sunday paper, U.S. Magistrate J. Brieant of the Southern District of New York, who was designated to handle the case, announced his finding and conclusions on the motion for a preliminary injunction sought by the Courier. Judge Brieant granted a temporary injunction on the News' tactics, on grounds including harm to the Courier and to the public.

He asserted the Courier "has made a clear showing that if appropriate injunctive relief isn't granted, irreparable injury will result."[17]

"The public interest here favors continued competition...," Brieant declared. "This Court's function is limited to an attempt...to see that the Evening News fights according to the Marquis of Queensberry."[18] The U.S. District Judge indicated he believed the Courier had a strong case to support monopolistic practices by the News. Brieant asserted the Courier "has shown a clear probability of success at trial on the issue of specific intent to monopolize."[19]

On the practice of the News giving its Sunday paper free to subscribers for five weeks, Brieant found it clearly unreasonable"[20] contending it appeared to be a monopolistic practice. On the 30-cent price for the Sunday paper being unreasonably low, Brieant said the court "cannot say that it is."[21] He reached the latter conclusion on whether the advertising rates were unreasonably low. Brieant found no evidence that the News disparaged the Courier nor evidence that the subscribers' contest was illegal.

Brieant's injunction limited the Sunday News' free issues to two of the five proposed and put controls on circulation figures given to advertisers, the amount of promotional material distributed and disparaging remarks.

On December 9, 1977, the News filed a notice of appeal.

On August 3, 1978, the News was cited for contempt for violating the injunction. Brieant ruled that a News' advertising salesman misled advertisers about the News' Sunday circulation. Brieant denied Courier motions for contempt for the News' allegedly using deceptive techniques to sell subscriptions and in spreading a rumor that the Courier was going out of business.

Some 16 months after the injunction was imposed, on April 16, 1979, the

United States Court of Appeals for the second circuit reversed the order granting the temporary injunction and the civil contempt count. Although the reversal didn't affect distribution of the Sunday News for introductory purposes, it would allow the News, if it were to so choose, to free distribution of its Sunday paper and decontrol the amount of promotional material and what the Courier viewed as disparaging tactics.

On the need for an injunction, the Appeals Court said it was not established the Sunday Courier would "sink in the interval before a final decision (by the jury trial on the issue), unless the federal court stepped in the ring 'to see that the Evening News fights according to the Marquis of Queensberry...' a test not mentioned in Section 2 of the Sherman Act or in previous decisions applying to it."[22] The higher court said the district court "had no sufficient basis for holding that the Courier had shown a clear probability of prevailing in its action for an attempt to monopolize."[23]

The court asserted that giving away the paper free for five weeks - based on the evidence - was not clearly unreasonable, as the district court held. It found "no basis for concluding that the News was proposing to engage in predatory acts."[24]

Analysis

In analyzing this case, consideration will focus on seven points: the application of anti-trust laws to newspapers; the market for the two newspapers; the test the Appeals Court uses to weigh injunctive relief; the issue of intent and attempt to monopolize; and the application of two key criteria of the Appeals Court test - grounds for litigation and hardship on the Courier.

Point 1: Application. The Associated Press v. United States case makes it clear that newspapers are subject to the anti-trust laws, and that these

statutes are not in violation of the First Amendment guarantee of press freedom. The Supreme Court stated, "Member publishers of AP are engaged in business for a profit exactly as are other businessmen who sell food, steel... All are alike covered by the Sherman Act."[25] In the United States vs. Times Mirror case, the high court wrote that it was "settled that the anti-trust laws apply to the daily newspaper business."[26]

Point 2: Relevant Market. In cases brought under Section 2, "the law required proof of the relevant market involved, since a monopoly or tendency toward a monopoly must be of a certain product and geographic market."[27]

District Court Judge Brieant dealt extensively with this issue, concluding that both newspapers are in the same market. The Appeals Court, however, in vacating Brieant's injunction, didn't deal with the market issue.

Brieant noted the geographic market, essentially the eight counties of western New York, the circulation market and the advertising market. He said that except for the Niagara Gazette, published daily and Sunday in Niagara Falls, and some slight penetration by Rochester papers, the Courier and Evening News are the only metropolitan papers (i.e., those emphasizing state and national news) in the geographic market, in which they now compete.

The district judge said that the circulation market consists of those persons within the geographic market who desire to read a metropolitan paper of general interest. He noted there are differences in style and treatment of news and differences in philosophy, but that both are sufficiently "in the mainstream of the community so that if one paper disappeared, the circulation market probably would not find the other paper so repugnant that it would refuse to buy."[28] He added that some part of the circulation market now buys both weekday papers and a very substantial part of the weekday Evening News readership buy the Sunday Courier. He found both papers in the same circulation

market.

Of the advertising market, Brieant found many advertisers use both papers interchangeably and simultaneously, although some 500 national accounts are said to limit their advertising solely to the News. He found both papers to be in the same advertising market.

The Courier had argued for three relevant markets; that is, sub-markets - one for the morning paper, one for the evening and one for the Sunday paper. The Courier noted the existence of the Sunday market as a separate sub-market, distinct from the weekday market, was recognized in the United States vs. Times Mirror case.[29] In the Times-Mirror case, the District Court focused on the elements of the acquisition relevant to the effects on competition: whether the Times-Mirror of Los Angeles, Calif., and the San Bernadino (Calif.) Sun were in the same product and geographical markets so as to be in competition for the consumer's dollar, the existing concentration in the southern California newspaper industry, and the degree of control exercised by Times-Mirror over the Sun's policies. The District Court concluded that the acquisition would substantially lessen competition in violation of the Clayton Act.

The high court's finding, overall, was that mergers which eliminate actual or potential competition in a newspaper area were forbidden. The Supreme Court rescinded a $15 million purchase of the Sun, an independent paper, by the Times-Mirror Corp.

The Courier maintained that the News, which is dominant in the Monday through Friday submarket, was seeking to use its power or leverage, to get a competitive advantage in another sub-market - the Sunday field.) Brieant disagreed, stating there is "no meaningful submarkets in the newspaper industry in Greater Buffalo."[30] The News concurred. It felt the relevant market is

the daily metropolitan newspaper, not any given edition. Brieant said, "The relevant market is that of metropolitan newspapers of general interest published in that geographical area. It is a small market in which the Courier and the Evening News are now, and have been, in competition for the patronage of the same readers and advertisers, and in which, historically, there have been no separately defined sub-markets, and in which the News is now and has been the clearly dominant competitor."[31]

Point 3: Injunctive Test. The Appeals Court, commenting that Brieant made his decision with "remarkable speed,"[32] said that the rule on deciding whether to grant preliminary injunctions is based on Caulfield v. the Board of Education of the City of New York.[33] Yet, Brieant makes no mention of this test in his opinion.

The Caulfield decision states:

> There must be a showing of possible irreparable injury and either (1) probable success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief.[34]

The Appeals Court found no case for irreparable injury, except in the limited sense of demonstrating the impracticality of computing damages. The judges didn't see either of the second set (1 and 2) conditions met.

Point 4: Attempt Issue. The Appeals Court said:

> The district court had no sufficient basis for holding that the Courier has shown clear probability of prevailing in its action for an attempt to monopolize. Such an attempt requires the employment of methods, which, though falling short of monopolization, create a 'dangerous probability...'[35]

The Appeals Court said it saw "no basis for concluding that the News was proposing to engage in predatory acts..."[36] Responding to the alleged predatory act of giving away the first five issues, the Appeals Court cited Sunday papers

in Toronto and Westchester which provided four-week samples. The Appeals Court found no support for finding anything over two excessive, as the District Court had.

The Appeals Court cautioned:

> In an attempt to monopolize case, court should exhibit restraint in imposing on the market their own notion of what constitutes improper competitive behavior. Doubtless the District Court could have held, even in the absence of evidence, that if the News had offered free copies to subscribers for ten weeks, that would have gone too far. But to impose a limit of two weeks without evidence to show that this was the limit of reasonableness - indeed in the face of evidence that other newspapers had offered four - is going beyond the proper judicial role.[37]

The Appeals Court added that the Courier's case for an attempt to monopolize was undercut when Brieant was not able to find that 30 cents, rather than 50 cents was an unreasonably low price for the Sunday paper. The Courier's Sunday paper sold for 50 cents.

Point 5: Intent Issue. The Courier, in a memorandum in support of its motion for the preliminary injunction, cited the Morning Pioneer Inc. vs. Bismarck Tribune case.[38] The high court wrote that the intent to monopolize was adequately shown by the Tribune's distribution of thousands of free newspapers throughout a housing section. The Courier also noted, in the memorandum, that in the 1957 Kansas City Star vs. United States case,[39] the court held that a Section 2 violation would be established upon a showing of and a likelihood of accomplishment of a monopoly.

The Appeals Court said there was not a probable success on merits at trial not only due to the lack of attempt to monopolize but also because of a lack of specific intent. The Court cited the need for specific intent as spelled out in Times-Picayune Publishing vs. United States.[40]

In the Times-Picayune case, the high court found that where business practices do not produce a demonstrably harmful effect, the anti-trust laws will not be enforced. At issue was the legality, under the Sherman Act, of the Times-Picayune Company's contracts for the sale of newspaper classified and national display advertising. The company owned the morning and evening papers and allegedly forced advertisers to buy space in both if they wished to advertise. The high court wrote, "An insufficient showing of specific intent vitiates this part of the Government's case. While the completed offense of monopolization under Section 2 demands only a general intent to do the act, 'for no monopolist monopolizes unconscious of what he is doing,' a specific intent to destroy competition or build monopoly is essential to guilt for the mere attempt now charged."[41]

Brieant had emphasized, "Mr. Buffett made no secret of his economic motivations and his acute awareness of the value which would be attached to ownership of the Evening News were it to become a monopoly."[42]

Brieant argued that the News' pretax earnings in a competitive market, $1,659,630 in 1976 and less in the two preceding years, would not justify an investment of $33 million when (at the then prime rate of 7 3/4 percent) borrowing would cost $2,557,500 a year. The district judge noted that Mr. Buffett bought the News without coming to Buffalo to visit the plant or personnel.

The Appeals Court, however, asserted, "We find simply no evidence that Mr. Buffett acquired the News with the idea of putting the Courier out of business as distinguished from providing vigorous competition, including the invasion of what had been the Courier's exclusive Sunday market."[43] The higher court said Mr. Buffett's assertions he had not sought to get a monopoly when he bought the News was bolstered by the financier's uncontradicted testimony

that monopoly newspapers sold for approximately three times gross revenues, whereas the range for non-monopoly papers was from .6 to 1.6 times gross revenues. He paid .8 of gross revenues for the News. In regard to Brieant's citing the ratio of the News' 1976 earnings to the purchase price was less than the annual cost of borrowing, the Appeals Court said Mr. Buffett had testified that he purchased the paper on anticipated earnings under new management, not on its past earnings.

The Appeals Court wrote:

> All the record supports is a finding that Mr. Buffett intended to do as well as he could with the News and was not lying awake thinking what the effect of its competition on the Courier would be. This is what anti-trust laws aim to promote, not to discourage. Courts must be on guard against efforts of plaintiffs to use anti-trust laws to insulate themselves from the impact of competition.[44]

Point 6: Fair ground for litigation issue. On the first part of the second criterion the Appeals Court uses as the test for granting a preliminary injunction (that is, sufficiently serious question going to the merits to make them a fair ground for litigation) the judges wrote, "We have serious doubt whether these issues presented 'fair ground for litigation,'"[45] citing no problem found with the 30-cent price charged for the Sunday paper.

Point 7: Hardship on Courier issue. Regarding the second part of the second criterion for the appeals Court test (that is, the need for a balance of hardships tipping decidedly toward the party requesting the preliminary relief) the Appeals Court wrote, "We need not decide whether these issues present fair ground for litigation since we do not perceive 'a balance of hardships tipping decidedly' toward the Courier."[46]

This tipping must mean real hardship from the denial of relief, the court explained, not merely the showing of difficulty of measurement which may suffice to constitute 'irreparable damage' where a plaintiff shows probable success.

The Appeals Court cited the "tipping" doctrine in Hamilton Watch Co., vs. Benrus Watch Co.[47] In that case, Hamilton Watch Co., of Lancaster, Pa., charged the Benrus Watch Co. of New York City with anti-trust violations under the Clayton Act. Benrus acquired Hamilton stock and Hamilton sought preliminary injunction to prevent irreparable damage by Benrus' voting the stock at an annual meeting. Hamilton was concerned that if Benrus would obtain a minority representation on its board, Benrus' competitive position would be helped and Hamilton's hurt.

The high court wrote, "Hamilton's threatened loss of competitive position by Benrus is a private harm constituting irreparable damage.[48] "There can be no doubt that if the Courier had shown a significant possibility that it would be driven out of business by the News in the period before the trial could be held, the Hamilton-Benrus test would have been amply passed. But... this is just what the Courier did not do," according to the Appeals Court.[49]

The Appeals Court noted that as of December 31, 1976, the Courier had current assets of $3,826,768 against current liabilities of $1,964,995, no long-term debt and stockholders' equity of $8,986,330. "This is not the picture of a paper that cannot survive a fight of five weeks or even the longer period before a full trial could be held."[50]

The Appeals Court explained:

> In our view the (district) court did not sufficiently appreciate the narrow limits that must be placed on the attempt to monopolize offense if charges of this nature are not to become a serious anti-competitive measure...We find in the record no direct evidence of a 'specific intent to destroy competition or build monopoly (as spelled out in the Times-Picayune case) or of the illegal acts which are necessary...With no demonstration of probable success, the Courier must rely on the Hamilton-Benrus doctrine. Since the judge made no findings on that score, we have full power to review and conclude that the test was not satisfied.[51]

Discussion

The Appeals Court decision vacating the preliminary injunction is supported by the evidence. The granting of a preliminary injunction takes a high degree of evidence based on a strict test, and Brieant's facts and analysis do not appear to meet that standard.

The Appeals Court finds there isn't a likelihood of probable success on the merits and, therefore, the standard for irreparable injury higher than just the impracticability of computing damages. This would require the likelihood of the Courier going out of business before the trial on the monopoly issue or facing a hardship to the degree Hamilton Watch Co. did when Benrus Watch Co. was about to get on Hamilton's board and competitively hurt Hamilton.

Brieant appears to place much more weight than the facts support on Buffett's intent to monopolize. One can show intent in at least two ways -- direct evidence and inferring from acts. Buffett's intent was based on inferring acts. The latter approach can have different interpretations. The first, Brieant's, was that Buffett's acts were predatory. However, they can also be interpreted, as the Appeals Court did, as competitive moves into the Sunday market. Brieant appears, a priori, to believe Buffett seeks to put the Courier out of business to make the News more valuable, and then sets out to make an analysis based on that belief rather than the facts.

On the issue of an attempt to monopolize, Brieant's ruling, that two issues given away free would be acceptable but any more would be too much, appears arbitrary. His view is also contradictory in that he sees predatory activity despite his ruling that the 30-cent price on the News' Sunday paper is not unreasonable.

The Appeals Court correctly finds the evidence needed for a preliminary

injunction doesn't meet the three prongs of the key four-pronged test: irreparable injury, probable success on the merits and hardship tipping toward the Courier.

The Appeals Court didn't dwell on the fourth prong, whether there was fair ground for litigation, other than to say there was a serious doubt that there was. The Appeals Court didn't have to because the evidence on the other three prongs was more than sufficient. The higher court also didn't go into the relevant market issue, apparently for the same reason--it didn't have to.

Conclusion

The analysis and discussion indicate the preliminary injunction shouldn't have been granted because the conditions didn't meet the rigorous demands for granting one. The District Court relied too much on the belief that Mr. Buffett had bought the News with the avowed purpose to shut the Courier down and triple the value of the investment. Mr. Buffett may very well have had this intent, but it hasn't been proven.

The record shows that through the injunction, under the Sherman Act, the News' promotional efforts in launching the Sunday paper were less than what the News' had planned. The best answer, however, to the question of the effectiveness of public policy (the Sherman Act) in promoting diversity in the Buffalo metropolitan market, appears to lie in the results of a trial on the monopoly question. There has been little movement towards a trial in the last year, however, and other possibilities include an out-of-court settlement or a lack of pursuit in the case by the Courier's new owners.[52] Meanwhile, the News has joined the Courier in financial difficulties.[53]

FOOTNOTES

[1]Ernest C. Hynds, American Newspapers in the 1970's (New York: Hastings House, Publishers, 1975), p. 129.

[2]Fred S. Siebert, "The Libertarian Theory of the Press," Four Theories of the Press (University of Illinois Press, 1956), pp. 39-71.

[3]John C. Schweitzer and Elaine Goldman, "Does Newspaper Competition Make a Difference to Readers?" Journalism Quarterly 52: 706-710 (Winter, 1975). Raymond B. Nixon, "Changes in Reader Attitudes Toward Daily Newspapers," Journalism Quarterly, 31: 421-33 (Fall 1954); Raymond B. Nixon and Robert L. Jones, "The Content of Non-Competitive vs. Competitive Newspapers," Journalism Quarterly, 33: 299-314 (Summer, 1956). Gerald L. Grotta, "Consolidation of Newspapers: What Happens to the Consumer?" Journalism Quarterly, 48: 245-249 (Spring 1971). Lee B. Becker, Randy Beam and John Russial, "Correlates of Daily Newspaper Performance in New England, Journalism Quarterly, 55: 100-108 (Spring 1978).

[4]Most notably, United States v. Times-Mirror, 270 F. Supp. 606

[5]The News defense cost $982,720, according to an article in the Guild Reporter, Sept. 14, 1979, p. 3. Also, the 1978 annual report of Blue Chip Stamps said litigation expenses generated by a competitive battle and extraordinary costs related to development of a new Sunday edition, put the Buffalo Evening News in a precarious position, according to excerpts in Editor & Publisher's annual review of public companies, May 26, 1979, p. 14.

[6]Richard C. Lyons Jr., Courier treasurer, in a deposition, October 28, 1978.

[7]Document figure derived from the docket, number o582, as of August 1979. On June 24, 1979, the Courier announced it had accepted a purchase offer from the Minneapolis Star and Tribune Co. This case had been initiated under the former owners, William J. Conners III and family of Buffalo.

[8]As of June 10, 1980.

[9]Statistics compiled from 601 F. 2d 50 (1979).

[10]Ibid.

[11]Lyons, op. cit.

[12]Ibid.

[13]Statement by Courier treasurer Richard C. Lyons, Jr., in Courier-Express article, "Court Hears Four Witnesses in Courier Suit Against News," Sunday, November 5, 1977.

[14] Courier's complaint for damages and injunctive relief for violation of federal anti-trust laws, filed Oct. 28, 1977, p. 6.

[15] On October 29, 1977, the morning following the filing of the complaint, the Courier published a page-one story and picture, plus three full inside pages of court documents. Subsequent news coverage of the legal bettle is seen by this author as heavy, including publication of numerous letter-to-the-editor backing the Courier.

[16] Answer of defendant, Buffalo Evening News, and counter-claim, Jan. 16, 1978, p. 9.

[17] 441 F. Supp. 645 (1977) J. Brieant, U.S. District Judge in the Southern District of New York, sitting by designation in the case, Nov. 9.

[18] Ibid., p. 646.

[19] Ibid., p. 641.

[20] Ibid., p. 643.

[21] Ibid., p. 643.

[22] 601 F. 2d 59 (1979). Decision by the United States Court of Appeals, Second Circuit, April 16.

[23] Ibid., p. 54.

[24] Ibid., p. 55.

[25] 326 U. S. 1,7. (1945)

[26] 390 U. S. 12. (1961)

[27] Robert N. Corley, Robert L. Black and O. Lee Reed, The Legal Environment of Business (New York, New York: McGraw-Hill Book Company, 1977).

[28] 441 F. Supp. 636

[29] Courier's memorandum in support of its motion for a preliminary injunction, Oct. 29, 1977.

[30] 441 F. Supp. 636

[31] Ibid., p. 636.

[32] 601 F. 2d 52

[33] 583 F. 2d 605 (2 Cir. 1978)

[34] 601 F. 2d 54

[35]Ibid., p. 54.

[36]Ibid., p. 55.

[37]Ibid., p. 545.

[38]493 F2d 383, 386-87 (8th Cir. 1969).

[39]354 U. S. 923 (1957).

[40]345 U. S. 594 (1953).

[41]Ibid., p. 626.

[42]441 F. Supp. 641

[43]601 F. p. 54.

[44]Ibid., p. 55.

[45]Ibid., p. 57.

[46]Ibid., p. 58.

[47]114 F. Supp. 307, 311, 313-14 (1953)

[48]Ibid., p. 317.

[49]601 F. 2d 58

[50]Ibid., p. 57.

[51]Ibid., p. 60.

[52]There was no movement toward going to trial on the monopoly issue as of June 10, 1980, a court spokesman said, indicating the case was "awaiting lawyers' action."

[53]Editor & Publisher on March 22, 1980, p. 50, reported "further losses sustained" by the News, attributed, in part, to competition and litigation. E & P on May 26, 1979, p. 14, stated that the News told stockholders, "If the competing paper (the Courier) succeeds in obtaining the kind of permanent injunctions it is seeking, or, if any extended strike shuts down the Buffalo Evening News, we believe that it will probably be forced to cease operations and liquidate, at an after-tax loss which could exceed $10 million." E & P also reported in the same article that management termed a $5 million loss "unsatisfactory." The News on Friday, April 14, 1978, p. 24, reported, "Legal expenses and other problems connected with the startup of a new Sunday newspaper have depressed the profits of the Buffalo Evening News." E & P, in an article May 31, 1980, p. 43, said that the new owners of the Courier-Express, the Minneapolis Star and Tribune Co, reported net earnings (of the parent corporation) dropped 38 per cent, to $7.7 million, for the fiscal year ending Feb. 23, 1980. Chairman Otto A. Silha blamed the earnings decline, in part, on "expenses related to the acquisition and initial expenses" of the Courier.